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**IN THE
COURT OF APPEALS OF INDIANA**

MICHELLE GAMMON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0606-CR-335
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49F09-0401-FC-2158 and 49F09-0601-FD-15299

February 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Michelle Gammon appeals her conviction for Theft,¹ a class D felony. Gammon also appeals the trial court's determination that she violated her probation by committing theft. Gammon presents the following restated issues for review:

1. Did the State present sufficient evidence to support the theft conviction?
2. Did the trial court erroneously determine that Gammon violated her probation by committing theft?

We affirm.

The facts most favorable to the judgment reveal that on the afternoon of January 26, 2006, Gammon went into the Double 8 Foods store located at 30th Street and Sherman Drive in Indianapolis. The store's meat manager, Lucinda Lyles, observed Gammon look around and then place some of the store's packaged meat into a backpack, as well as some into her grocery cart. Lyles watched as Gammon proceeded to the cash register and paid for some items. Lyles, who observed the entire transaction from a distance, testified that Gammon never took the meat out of the backpack to pay for it.

As Gammon went outside and began loading merchandise into her truck, Lyles approached and asked to search the backpack. Gammon "smarted off something", but eventually entered the store when Lyles indicated that she would have to call the police. *Transcript* at 10. Once inside the store, Gammon grabbed Lyles by the arm and a struggle ensued over the backpack. During the altercation, several packages of meat² fell out of the backpack, and the store manager called the police. At that point, Lyles told

¹ Ind. Code Ann. § 35-43-4-2(a) (West 2004).

² This packaged meat was labeled, "Double 8 Foods. 30th and Sherman Drive." *Id.* at 17.

Gammon that she should go outside and check on her child, whom Gammon had apparently left outside in the cart. Gammon then exited the store, jumped in her vehicle, and drove away, leaving her child behind. At the time of this incident, Gammon was on probation for a prior forgery conviction.

Gammon was subsequently arrested and charged with theft, a class D felony. As a result of this charge, the State also filed a notice of probation violation. The case proceeded to a bench trial on April 6, 2006, at which Gammon was found guilty of theft. Thereafter, on May 25, the trial court held a consolidated hearing regarding sentencing and the alleged probation violation. The trial court found that Gammon had violated the terms of her probation by committing theft. As a result, the court revoked Gammon's probation and imposed the previously suspended three-year sentence to be served on Community Corrections Home Detention. The court further sentenced Gammon to an additional 180 days of home detention for the theft conviction. Gammon now appeals.

1.

Gammon initially challenges the sufficiency of the evidence regarding her conviction for theft. Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor assess the credibility of the witnesses. *Overstreet v. State*, 783 N.E.2d 1140 (Ind. 2003). Rather, we look to the evidence most favorable to the judgment and draw reasonable inferences therefrom. *Id.* The conviction will be upheld if there is substantial evidence of probative value from which the trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* In other words, we will not substitute our judgment for that of the trier of fact, and the claim of insufficient

evidence will prevail only if no reasonable trier of fact could have found Gammon guilty beyond a reasonable doubt. *See Ritchie v. State*, 809 N.E.2d 258 (Ind. 2004).

Gammon does not dispute that meat from the store was found in her backpack. Rather, she argues the State failed to prove beyond a reasonable doubt that she did not pay for the meat. She asserts: “For all the court knew, however, Gammon could have pulled the meat out of the backpack at the cash register, paid for it, and then put it into the backpack.” *Appellant’s Brief* at 4-5.

As set forth above, Lyles saw Gammon place packages of meat into her backpack, as well as some into her cart. Gammon then proceeded to the cash register and paid for some merchandise before leaving the store. Lyles, who observed the entire transaction, specifically testified that Gammon “never did pull the meat out of the backpack” during the transaction. *Transcript* at 18. This evidence sufficiently establishes that Gammon did not pay for the meat found in her backpack. Therefore, Gammon’s sufficiency challenge fails.

2.

Gammon also challenges the revocation of her probation, which was based on her theft conviction. She argues: “If this court reverses Gammon’s theft conviction, it should then remand to the trial court with instructions to vacate the finding that Gammon violated her probation conditions.” *Appellant’s Brief* at 3. Because we have upheld Gammon’s conviction for theft, we similarly affirm the revocation of Gammon’s probation.

Judgment affirmed.

KIRSCH, C.J., and RILEY, J., concur.